

Guidance for Section 114(d) of the CAA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
December 2, 1977
OFFICE OF ENFORCEMENT

MEMORANDUM

FROM:

Director, Division of Stationary Source Enforcement

TO:

Enforcement Division Directors, Regions I-X
Surveillance and Analysis Division Directors, Regions I-X
Air and Hazardous Materials Division Directors, Regions I, III-X
Facilities Technology Division Director, Region II

Attached is the final guidance package on Section 114(d) of the CAA. This guidance incorporates comments solicited by DSSE in my September 9 memorandum. It should be remembered that this guideline only covers the provision for notifying the States pursuant to the requirement. Even though most regions are currently practicing some form of this guideline, it should be implemented immediately.

Guidance on suspension of such notification should EPA believe that the State agency is informing the subject facilities is forthcoming. Any occurrences of this nature should be brought to the attention of the DSSE technical advisor for your region.

Attached under separate cover are the regional comments on the interim guidance and DSSE's response. I would like to thank all those participating for their comments.

Edward E. Reich

cc:

Richard Wilson
Walt Barber
Richard Rhoads
Donald Goodwin

Guidance on the Use of Section 114(d):

Notice to the State in Case of Certain Inspections.

Introduction

The purpose of this guideline is to provide general policy on implementing the requirements of Sec. 114(d) for enforcement purposes. This guideline only covers the provisions of notification to the State agency of an EPA entry, inspection or monitoring. Future guidance will be provided for suspension of this notice should EPA believe that the State agency is informing subject facilities.

This guideline should be used in conjunction with S.12 "General Policy on the Use of Section 114 Authority for Enforcement Purposes".

Requirements Of 114(d)

New subsection 114(d) adds an additional requirement to the process of carrying out Section 114(a)(2) of the CAA. Section 114(a)(2) establishes right of entry for certain purposes and the right of the Administrator to sample emissions. Section 114(d) provides that the Administrator (or his representatives*) shall provide the State air pollution control agency with reasonable prior notice" before carrying out Section 114(a)(2). It also requires EPA to indicate the purpose of the activity.

Implementation

The Regional office should first establish contact with the director of State agencies to formulate a mutually agreed upon procedure for implementation of this new requirement. This procedure should include:

- Name of person(s) to be notified

- Means of notification (telephone or written)

- Lead time prior to any EPA field investigation (reasonable prior notice)

- Policy of notifying the state of unscheduled inspections Extent of the stated purpose of the visit

*The term "representatives" includes specific regional office and headquarters personnel and contractors with credentials under EPA contract.

In establishing these procedures with the State agencies it is suggested that the following guidance be implemented.

Reasonable prior notice is interpreted as an official notification to the State agency that EPA is planning to conduct a surveillance action at a source and the purpose of that activity. It is recommended that all notifications be made within the 30 day period prior to the field activity; with 48 hours being the minimum notification period under normal circumstances. This is to provide sufficient travel time for EPA personnel and State personnel should the state choose to attend. An exception to the 48 hour notice would be a Section 303 situation where an emergency requires immediate attention. In such

cases, the State agency should immediately be informed by phone that an action is needed.

In cases where the region practices the policy of notifying states of inspections 2-3 months in advance with a request that they be contacted if state personnel wish to accompany them, a confirmation of only those state accompanied inspections should be made. A phone call a few days before the inspection sufficient. An effort should also be made to minimize changes in this advanced notification schedule.

The means of notifying the States can be in the form of written or oral communication. A record of all written or oral notifications should be kept. This should include a record of unscheduled inspections and Section 303 actions. The record of the written or oral notification should consist of:

- (1) name and-location of subject facility
- (2) date and approximate time of the activity
- (3) Regional office contact (phone number, etc.)
- (4) reason for the visit
- (5) name of State person contacted
- (6) date and time of notification

Each office should have a central file containing records of all notifications should a request for list of all notifications be made. It is not necessary for the State to approve the inspection before EPA proceeds.

As stated in the amendments, all sources covered by an approved SIP or those under a State 113(d) order are subject to these requirements. Surveillance of those sources that are subject to EPA promulgated regulations do not require advance notice by EPA. In reality, few sources will fall into this latter category. If the region adheres to EPA policy, all emission points at a source should be inspected. In doing so it is likely that certain points will be subject to SIP regulations therefore subject to the notification requirements. It is recommended that States be, notified of all EPA field actions, including those concerning nonstate unless good cause exists not to do so. Written inquiries to sources under Section 114(a)(1) do not require advance notice to the State;

Enforcement Procedures

It is the intent of this additional section to increase State/EPA cooperation and, as such, it must be fully complied with. However, as stated in Sec. 114(d)(2), failure by EPA to notify the State of any entry, inspection or monitoring will not prejudice any case involving information obtained during such an activity and will not constitute grounds for objection by the source.

This electronic file has been retyped to make it available to you in electronic form. Formatting (margins, page numbering, etc.) may differ from the original hard copy to make the document more easily readable on your computer screen. If any discrepancies are found, the file copy (hard copy original) which resides at the U.S. EPA provides the official policy. Information on the file copy may be obtained from the Air Enforcement Division, Stationary Source Program at (202) 564-2414.